

### **REMARKS/ARGUMENTS**

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and the following remarks are presented for the Examiner's consideration.

The Examiner rejected claim 2 under 35 U.S.C. 102(e) as being anticipated by Iwagaki et al., U.S. Patent No. 6,707,999.

Applicant notes that the Examiner's rejection is an improper 35 U.S.C. 102(e) rejection. 35 U.S.C. 102(e)(2) states that "A person shall be entitled to a patent unless (e) the invention was described in (2) a patent granted on an application for patent filed by another filed in the United States before the invention by the applicant for patent." Thus, the effective prior art date of Iwagaki under 35 U.S.C. 102(e)(2) is the U.S. filing date which is March 28, 2001. The filing date of the present application is November 29, 2000, which is clearly before the filing date of Iwagaki. Therefore, the rejection under 35 U.S.C. 102(e) is improper.

Furthermore, the Examiner's statement regarding a reference that is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000 is irrelevant. Under 35 U.S.C. 102(e) in order for the prior art U.S. patent to get an earlier filing date of an international application the U.S. patent must be based on an international application and not merely a priority claim of a foreign application. An international application is defined as "an international application for patent filed under the Patent Cooperation Treaty prior to entering national processing at the designated office." 37 CFR 1.9(b) (2003). Thus, the prior art U.S. patent must be a PCT based application in order to get an earlier filing date under 35 U.S.C. 102(e). In the present case, neither the present application nor Iwagaki are PCT-based applications. Rather, both are based on foreign Japanese applications. Therefore, a claim to priority of an international application under 35 U.S.C. 102(e) would not apply. In addition, because the prior art reference is not based on an international

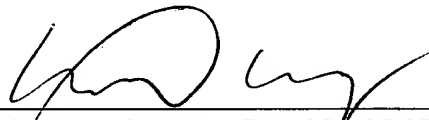
application, the Examiner's statement that pre-AIPA 35 U.S.C. 102(e) applies is also irrelevant because no international application was filed before November 29, 2000.

The Examiner has failed to acknowledge Applicants priority claim in the original application, filed on November 29, 2000, under 35 U.S.C. 119 to Japanese Patent Application No. Hei 11-343970, filed on December 2, 1999. A certified copy of the Japanese Patent Application was forwarded on December 27, 2000. Applicant requests that the Examiner acknowledge Applicants claim to priority in the next official communication.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33157.

Respectfully submitted,  
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